

# PATENT COOPERATION TREATY

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INTERNATIONAL SEARCHING AUTHORITY

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## WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing  
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference  
see form PCT/ISA/220

**FOR FURTHER ACTION**  
See paragraph 2 below

International application No.  
PCT/US2004/021173

International filing date (day/month/year)  
30.06.2004

Priority date (day/month/year)  
07.07.2003

International Patent Classification (IPC) or both national classification and IPC  
C08J9/00

Applicant  
DOW GLOBAL TECHNOLOGIES INC.

### 1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☒ Box No. VII Certain defects in the international application
- ☒ Box No. VIII Certain observations on the international application

### 2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

### 3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



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**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/US2004/021173

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**Box No. I Basis of the opinion**

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1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.  
☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
  - a. type of material:  
☐ a sequence listing  
☐ table(s) related to the sequence listing
  - b. format of material:  
☐ in written format  
☐ in computer readable form
  - c. time of filing/furnishing:  
☐ contained in the international application as filed.  
☐ filed together with the international application in computer readable form.  
☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/US2004/021173

**Box No. II Priority**

1. ☒ The following document has not been furnished:

☒ copy of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(a)).

☐ translation of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

**Box No. V Reasoned statement under Rule 43*bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes: Claims	
	No: Claims	1-3,8,10,14-16,23
Inventive step (IS)	Yes: Claims	
	No: Claims	1-23
Industrial applicability (IA)	Yes: Claims	1-23
	No: Claims	

2. Citations and explanations

see separate sheet

**Box No. VII Certain defects in the international application**

The following defects in the form or contents of the international application have been noted:

see separate sheet

**Box No. VIII Certain observations on the international application**

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

**Re Item V.**

- 1 The following document is referred to in this communication:

D1 : US 5 000 992 A (KELCH ROBERT H) (1991-03-19)

**2 NOVELTY**

Document D1 discloses a foamed polyolefin sheet of 6,5 mils thick having an MD tear strength of 355 g/mil (cf. D1, example 1).

The sheet disclosed in document D1 falls within the scope of the subject-matter of claim 1 of the present application. Therefore, the present application does not meet the requirements of Art.33(2) PCT, because the subject-matter of claim 1 is not new. This novelty objection applies also to the dependent and independent claims 2, 3, 8, 10, 14-16 and 23.

Thus, the applicant is invited to submit new claims which are clearly novel with respect to document D1.

**3 INVENTIVE STEP**

If the applicant wishes to render said claims novel by incorporating therein any feature not previously claimed, then in order to help the examiner assess inventive step with respect to the objective problem, he ought to show that this feature was non-obvious with respect to the desired objective and preferably is causative to an unexpected technical effect. Only in this case could such a feature contribute to an inventive step with respect to D1 according to Art.33(3) PCT.

**Re Item VII.**

1.) All units should meet the requirements of Rule 10(a), (b) and (d) EPC and non-SI units should be replaced by the appropriate SI units. The present expressions should, however, be retained in parentheses after the replacement expressions ("mils" in claims 1-5, 16 and 17 as well as at pages 1, 3-6, 12 and 13; "inch" in claims 4, 5 and at pages 6, 7, 11 and 12; "PSI" at pages 10-12; "lbs" at pages 11-13; "°F" at pages 11 and 12). Furthermore, "microns" should be replaced by "µm" in claim 2 and at pages 4 and 5.

2.) The "incorporation by reference" of the entire contents of other documents could lead to doubt as to the extent of protection sought by the claims. This phrase should therefore be deleted (cf. pages 7 and 9).

**Re Item VIII.**

1.) The claims are not consistent with the description as in claim 1 a sheet is claimed having a tear strength of at least 150 g/mil whilst in the description at page 4, lines 10-11, it is stated that the "films of the present invention ... have an MD tear strength of at least 160 g pro 3 mils", which means that this film has a tear strength of about 50 g/mil as stated at page 5, line 24. This inconsistency should be removed.

2.) The use of the word "about" in connection with the limits of ranges renders the scope of protection sought by the claims unclear (Art.6 PCT) (see claims 13 and 22).